of New York would be in substance and effect a tax upon tangible property situated outside the State and would violate her rights under the laws of New York, the Constitution of the United States, and the Fourteenth Amendment thereof.

(Signed) Charles W. Pierson.

Sworn to before me this 3rd day of July, 1931. R. Damm, Notary Public. Kings County, N. Y. No. 130. Certificate filed in New York County No. 350. Kings County Register's No. 2134. New York County Register's No. 2D-252. Commission expires March 30, 1932. (Notarial Seal.)

[fol. 10] IN SUPREME COURT OF NEW YORK

Present: Honorable F. Walter Bliss, Justice.

ORDER THAT WRIT OF CERTIORARI ISSUE—March 11, 1932

On reading and filing the petition of Elizabeth G. Pierson, verified the 11th day of February, 1932, and the notice of application for an order for a writ of certiorari dated the 24th day of February, 1932, with proof of due service thereof, and it appearing that said Elizabeth G. Pierson has deposited with and paid to the State Tax Commission under protest the full amount of taxes, interest and other charges audited and stated in the determination mentioned and described in said petition, and that she duly filed an undertaking with said State Tax Commission pursuant to the provisions of Section 375 of the Tax Law, and on motion of Alexander & Green, attorneys for the petitioner, it is

Ordered, that a writ of certiorari do issue from and out of this Court directed to Thomas M. Lynch, John J. Merrill, and John P. Hennessey, as Commissioners constituting the State Tax Commission of the State of New York, to review the decision and determination of the said State Tax Commission mentioned and described in the petition and the [fol. 11] questions involving the merits therein mentioned, which writ shall be returnable at the office of the Clerk of the County of Albany within twenty days after service thereof upon the said State Tax Commission of the State of New York.

Enter:

F. Walter Bliss, Justice of the Supreme Court of the State of New York.

IN SUPREME COURT OF NEW YORK

WRIT OF CERTIORARI

Whereas, we have been informed by the petition of Elizabeth G. Pierson, verified the 11th day of February, 1932, that certain proceedings have been had before the State Tax Commission of the State of New York upon the application made on her behalf on or about September 18, 1930, for a revision of the assessment against her made under date of July 14, 1930, of an additional personal income tax of $76.16 for the year 1928, as set forth in said petition, and that the State Tax Commission made its determination dated December 7, 1931, denying the same, and said Elizabeth G. Pierson having now made application to this Court for a writ of certiorari to review said decision and determination of said State Tax Commission, and we, being willing for certain purposes to be certified of such proceed-
[fol. 12] ings, do hereby command and strictly enjoin Thomas M. Lynch, John J. Merrill and John P. Hennessey, as Commissioners constituting the State Tax Commission of the State of New York, that they certify and return the accounts and all the evidence before them upon the application of said Elizabeth G. Pierson for a revision of said assessment, and all the evidence, documents, reports, records, and papers relating thereto at the office of the Clerk of the County of Albany, within twenty days after the service upon them of this writ, pursuant to the provisions of the Tax Law and other requirements of law, so that our Supreme Court may further cause to be done therein what of right and according to law ought to be done, and let the defendants have then and there this writ.

Witness, the Honorable F. Walter Bliss, Justice of this Honorable Court, at the Court House in the City of Albany, New York, this 11th day of March, 1932.

John A. Knox, Clerk. (Albany County Seal.)

Alexander & Green, Attorneys for the Relator, Office & P. O. Address: No. 120 Broadway, Borough of Manhattan, City of New York, N. Y.

This writ is hereby allowed this 11th day of March, 1932.
F. Walter Bliss, Justice of the Supreme Court of the State of New York.

[fol. 13] IN SUPREME COURT OF NEW YORK

RETURN TO WRIT OF CERTIORARI

The above named respondents, obedient to an order and writ of certiorari herein made on March 11, 1932, hereby make return thereto consisting of the accounts and all the evidence before the defendant State Tax Commission, upon the application of the relator herein, for the revision of a certain personal income tax assessment, together with all the evidence, documents, reports, records and papers relating thereto as required by said order and writ of certiorari:

Exhibit 1—Determination by the State Tax Commission, dated December 7, 1931.

Exhibit 2—New York State income tax resident return for the year 1928, executed by Elizabeth G. Pierson.

Exhibit 3—Audit Program A, 1928.

Exhibit 4—Notice of additional assessment of income tax, dated July 14, 1930—Notice No. 490501.

Exhibit 5—Letter dated May 3, 1930, from State Tax Commission to Elizabeth G. Pierson.

Exhibit 6—Letter dated May 6, 1930, from Charles W. Pierson to State Tax Commission.

Exhibit 7—Letter dated September 30, 1930, from State Tax Commission to Elizabeth G. Pierson.

Exhibit 8—Application for revision executed by Charles W. Pierson as Attorney-in-Fact for Elizabeth G. Pierson.
[fol. 14] Exhibit 9—Letter dated January 2, 1931, from Alexander & Green to State Tax Commission.

Exhibit 10—Letter dated January 7, 1931, from State Tax Commission to Alexander & Green.

Exhibit 12—Affidavit of Charles W. Pierson, verified July 3, 1931, together with letter of same date from Charles W. Pierson to State Tax Commission.

Respondents deny each and every allegation in the petition herein except in so far as the same are shown to be true by this return.

Respondents allege that the tax imposed upon plaintiff herein was justly and legally imposed upon her, under the laws of the State of New York.

In witness whereof, the State Tax Commission hereunto sets its hand and seal this — day of April, 1932.

State Tax Commission, Thomas M. Lynch, President; —— ——, Commissioner; John P. Hennessey, Commissioner.

STATEMENT RE EXHIBIT 1—DETERMINATION BY THE STATE TAX COMMISSION, DATED DECEMBER 7, 1931

Printed as Schedule A attached to Petition at page 7.

(Here follows Exhibit 2, side folios 15 & 15a)

EXHIBIT 2—NEW YORK STATE INCOME TAX RESIDENT RETURN FOR THE YEAR 1928, EXECUTED BY ELIZABETH G. PIERSON

8-30-28-800,000 (3-1304)

Long Form No. 201. Page 1 of Return

This return may be used by any resident individual. It is primarily for those engaged in business or profession or having income from rents and gains or losses from sale of property. Non-residents should use Form 203.

NEW YORK STATE INCOME TAX RESIDENT RETURN

For the Calendar Year 1928 or Fiscal Period

begun.....

and ended.....1928

1928

Do not write in these spaces

Amount paid

$ 120.00

CASHIER'S STAMP

No. 106756

RECEIVED
STATE
TAX BUREAU
APR 12 1929
Borough of Manhattan
Teller E

Do not write in these two spaces

PRINT NAME AND RESIDENCE ADDRESS PLAINLY BELOW

NAME: ELIZABETH G. PIERSON
(First name in full—middle initials—last name in full)

RESIDENCE ADDRESS (No.): 925 Park Avenue
(Street or avenue or rural route)

New York City, N.Y.
(City, Village, Post office and State)

FILE AT OFFICE OF THE NEW YORK STATE INCOME TAX BUREAU, 42 NORTH PEARL ST., ALBANY, N. Y., OR AT ANY DISTRICT OFFICE ON OR BEFORE APRIL 15, 1929

READ INSTRUCTIONS CAREFULLY BEFORE PREPARING YOUR RETURN

ANSWER QUESTIONS 1—10 IN FULL

1. Did you file a N. Y. State return for 1926? yes 1927? yes
2. If so, give any address other than that above used on such returns ------
3. If no return for 1927 was filed, state reasons ------
6. Were you married and living with wife or (husband) on the last day of your taxable year? yes
7. If not, were you on the last day of your taxable year the "head of a family" as defined in Instruction D? ----
8. If your status in respect to Questions 6 and 7 changed during the year state the date of such change -----
9. How many dependent persons (other than husband or wife) under

SEE HERE

EXHIBIT 2—NEW YORK STATE INCOME TAX RESIDENT RETURN FOR THE YEAR 1928, EXECUTED BY ELIZABETH G. PIERSON

8-30-28-600,000 (3-1204)

This return may be used by any resident individual. It is primarily for those engaged in business or profession or having income from rents and gains or losses from sale of property. Non-residents should use Form 203.

Long Form No. 201. Page 1 of Return

NEW YORK STATE INCOME TAX RESIDENT RETURN

For the Calendar Year 1928 or Fiscal Period

begun 1928

and ended .....

1928

Do not write in this space. Amount paid $ 126.10

CASHIER'S STAMP

No. 106756

RECEIVED TAX BUREAU APR 12 1929 Borough of Manhattan Teller E

Do not write in these two spaces

PRINT NAME AND RESIDENCE ADDRESS PLAINLY BELOW

NAME: ELIZABETH G. PIERSON (First name in full—middle initials—last name in full)

RESIDENCE ADDRESS (No.): 925 Park Avenue (Street or avenue or rural route)

New York City, N.Y. (City, Village, Post office and State)

FILE AT OFFICE OF THE NEW YORK STATE INCOME TAX BUREAU, 42 NORTH PEARL ST., ALBANY, N. Y., OR AT ANY DISTRICT OFFICE ON OR BEFORE APRIL 15, 1929

READ INSTRUCTIONS CAREFULLY BEFORE PREPARING YOUR RETURN

ANSWER QUESTIONS 1—10 IN FULL

1. Did you file a N. Y. State return for 1926? yes 1927? yes
2. If so, give any address other than that above used on such returns ------
3. If no return for 1927 was filed, state reasons ------
4. Is this a joint return of the income of husband and wife? no
5. If not, and your wife (or husband) filed a separate return, give name and address on such return Charles A. Pierson, 925 Park Avenue, New York City.
6. Were you married and living with wife or (husband) on the last day of your taxable year? yes
7. If not, were you on the last day of your taxable year the "head of a family" as defined in Instruction D? ----
8. If your status in respect to Questions 6 and 7 changed during the year state the date of such change ------
9. How many dependent persons (other than husband or wife) under eighteen years of age, or mentally or physically defective, were receiving their chief support from you on the last day of your taxable year? none
10. What is the relationship to you of the dependent persons for whose support you claim exemption under Questions 7 and 9? ------

ATTACH REMITTANCE HERE

NON-TAXABLE INCOME

11-13. Enter here all income received during the taxable year 1928, not reported on page 2. (See Instruction E)

N.Y. City Bond	$ 42 50		$
	$		$
	$		$
	$		$
	$		$

CALCULATION OF TAX

		Amount of Income Taxable at each Rate	Rate of Tax	Amount of Tax
14. Net income as shown by Item 35 (Page 2 of Return)	$ 11,324 65	$ 10000 00	17. 1% on first $10,000 of Item 16.	$ 100 --
15. *Less* personal exemptions (See Instruction D)	none	1324 65	18. 2% on next $40,000 of Item 16.	2650
			19. 3% on amount over $50,000 of Item 16	----
16. Balance SUBJECT TO TAX (Item 14 minus Item 15)	$ 11,324 65	$ 11324 65	20. TOTAL	$ 12650

THE TAX MUST BE PAID IN FULL ON FILING RETURN—Make checks or money orders payable to STATE TAX COMMISSION (DO NOT SEND CURRENCY BY MAIL. POSTAGE STAMPS WILL NOT BE ACCEPTED IN PAYMENT OF TAX).

AFFIDAVIT STATE OF NEW YORK—COUNTY OF New York, ss.:

I swear (or affirm) that to the best of my knowledge and belief, the statements contained in this return, including the accompanying schedules and statements (if any) are true, and this return is a true and complete statement, in accordance with the law and regulations, of all income, gains and profits received by or accrued to me (or the person for whom this return is made) during the taxable year 1928, and that all deductions entered or claimed herein are allowable under the law and regulations.

Sworn to and subscribed before me this 10th day of April 1929

Elizabeth G. Pierson (Signature of individual or agent)

E. L. Henderson (Title) Notary Public

(Address of agent)

(Signature of officer administering oath and title)

COMMISSION EXPIRES MARCH 30, 1929

[201] [1928]

10A

RETURN OF TAXABLE INCOME

Include income of wife (or husband) and earnings of dependent minor children, unless reported in separate returns.

21. INCOME FROM PERSONAL SERVICES (Salaries, Wages, Fees, Commissions, Bonuses, etc.)

Show the gross amount received (or accrued); if deductions therefrom are claimed, report them at Item 31.
Do not include compensation paid by the United States.
See Instruction 21.

(a) OCCUPATION OR TRADE	(b) NAME AND ADDRESS OF EMPLOYER	AMOUNT
None		$

22. INCOME FROM INTEREST

Report interest received (or accrued) and collectible matured coupons.
Include interest on municipal or state bonds other than municipal or state bonds of the State of New York, on such interest is taxable.
Include exempt interest (See Instruction E.)

Interest (bonds or other corporate obligations; bank deposits, mortgages, notes, etc.) ..... $ 3,174.26

23. INCOME FROM DIVIDENDS

Explain valuation of dividends received other than in cash.
See Instruction 23.

(a) Received in cash ..... $ 6,866.52

(b) Received in property (other than true stock dividends) ..... None .....

24. INCOME FROM PARTNERSHIPS, ESTATES AND TRUSTS

Report your entire share (whether distributed or not) of the profits of the partnership (including salary and interest) or of the income of the estate or trust, not merely the amount withdrawn by or paid to you.

Give name and address of partnership, estate or trust. If estate or trust, give also name and address of fiduciary.

(a) Citizens Nat. Bank & Trust Co., $ 880.00

(b) Cincinnati, Ohio

25. INCOME FROM BUSINESS OR PROFESSION (Including Farming) See Instruction 25

Enter here your net income from business or profession, Item 35 of Schedule A. Net income (or loss) from farming operations as computed on Farm Schedule, Form 201, or other schedule used in lieu thereof, should be entered here, and such schedule attached to this return.

Net income from business or profession as shown on Schedule A, or on farm schedule, hereto attached ..... None ..... $
(If a loss, enter in red ink and subtract)

26. INCOME FROM RENTS AND ROYALTIES (See Instruction 26)

(a) KIND OF PROPERTY AND LOCATION	(b) GROSS AMOUNT OF RENTS AND ROYALTIES	(c) REPAIRS, DEPRECIATION AND DEPLETION (explain in Schedule B)	(d) TAXES	(e) INTEREST AND OTHER EXPENSES (explain principal items in Schedule C)

26 NONE: Am advised that rents from real estate situated in Cincinnati, Ohio, ($2223.72) reported in Federal Income Tax return are not taxable in the state of New York.

(1) NET INCOME FROM RENTS AND ROYALTIES (Column b, less total of columns c, d and e). If net loss, enter in red ink and subtract. $ | $ | $ | $ | $

27. PROFIT (OR LOSS) FROM SALE OR EXCHANGE OF STOCKS OR BONDS (Not dealt in as a business and not included in Item 25). See Instruction 27

First fill out Schedule E; then enter here the amount of gain or loss shown thereon.

$ 843.58
(If a loss, enter in red ink and subtract)

28 NONE: Am advised that profits from sale of real estate situated in Cincinnati, Ohio, ($1584.31) reported in Federal Income Tax return are not taxable by the State of New York.

or loss to convey.
(If a loss, enter in red ink and subtract)

29. OTHER INCOME (Describe each source separately and in full)

Do not report exempt income here or income from sources described in Items 21-28, inclusive.

(a) Interest on U.S. Income Tax refund $ 9.09

(b)

30. TOTAL INCOME FROM ABOVE SOURCES (Items 21 to 29 inclusive) ..... $ 11,773.45

31. DEDUCTIONS

(a) Interest on indebtedness ..... None ..... $

(b) Taxes on real property (except assessments for local benefits) .... None .....

(c) Other taxes (except income and inheritance taxes). State character and amount of each 26.60
Personal Tax

OTHER DEDUCTIONS (Describe each separately and in full)

(d) None

(e)

32. TOTAL DEDUCTIONS (except contributions) ..... $ 26.60

33. BALANCE (Item 30 minus Item 32) ..... $ 11,746.85

34. CONTRIBUTIONS (See Instruction 34). These must not exceed 15% of Item 33. Submit details on Schedule D, page 3 ..... 422.00

35. NET INCOME SUBJECT TO TAX (Item 33 minus Item 34) *Enter on page 1, Item 14* ..... $ 11,324.85

1015

[fol. 16] EXHIBIT 3—AUDIT PROGRAM A, 1928

Form 320-A (Revised)
New York State
Income Tax

Audit Division

Audit Program—A
Individual Tax Return
Name Pierson, Elizabeth G.
Address 925 Park Ave.,
Code N. Y. C.

1928

Information Reports Received and Checked Against Return

Item of return	No. of reports	Amount reported	Amount on return	Remarks
.....	$.....	$.....	$.....	.....
.....	$.....	$.....	$.....	.....
.....	$.....	$.....	$.....	.....
.....				

2 ..... Notes of Items to Be Questioned .....
Item No ..... Comment .....

15	Ex OK—	
26	Unless a non-resident, this appears to be taxable income	$2223.72
28	Likewise profit from sale of R. E.	1584.31
		$3808.03
	2% Assess.	$76.16

(Husband takes $4,000 ex.)

3. Income Tax return audited:

(a) Tax due ..... Amount $76.16 Taxpayer notified ..... (No.) ..... (Date)

(b) Refund due ..... Amount $.... Taxpayer notified ..... (No.) ..... (Date)

Approved: Date 7/10/30. W. A. D., Unit Chief.

Cantin, Auditor.

(Here follows Exhibit 4, side folios 17 & 17a)

EXHIBIT 4—NOTICE OF ADDITIONAL ASSESSMENT
TAX, DATED JULY 14, 1930—NOTICE NO. 49

Form No. 321-23
New York State
Income Tax

NEW YORK STATE-DEPARTMENT OF TAXATION AND
INCOME TAX BUREAU
NOTICE OF ADDITIONAL ASSESSMENT OF IN

ORIGINAL

ALBANY, N. Y.

Date JU

Against

Elizabeth G. Pierson
925 Park Avenue
New York City

53583

The audit of your State income tax return for 1928 discloses additional

Explanation:

Rental income -	$2223.72
sale of real estate -	1584.31
a total of -	3808.03
taxable income. Tax due at 2% -	

WAD.G

If not paid within ten days from date hereof there shall be added to the amount of this assessment 5% interest at 1% per month for each month or fraction of a month from the date of this notice. (See Tax L

The foregoing tax is hereby assessed as indicated herein.

THE ST

PAYMENT MAY BE MADE AT ANY OFFICE OF THE NEW YORK STA
MAKE CHECKS PAYABLE TO THE STATE TAX COMMIS

EXHIBIT 4—NOTICE OF ADDITIONAL ASSESSMENT OF INCOME TAX, DATED JULY 14, 1930—NOTICE NO. 490501

Form No. 321-33
New York State Income Tax

NEW YORK STATE-DEPARTMENT OF TAXATION AND FINANCE
INCOME TAX BUREAU
NOTICE OF ADDITIONAL ASSESSMENT OF INCOME TAX

No._____

ORIGINAL

ALBANY, N. Y.

RECEIVING STAMP

No.

Date JUL 14 1930

Against

Elizabeth G. Pierson
925 Park Avenue
New York City

53583

YOU MAY KEEP THIS NOTICE

Payment must be made within ten days

7 & 17a)

The audit of your State income tax return for 1928 discloses additional tax due from you as stated below:

Explanation:		Amount of tax due
Rental income -	$2223.72 and profit on	
sale of real estate -	1584.31	
a total of -	3808.03 is considered	
taxable income. Tax due at 2% -		$76.16

WAD.G

If not paid within ten days from date hereof there shall be added to the amount of this assessment 5% thereof, and in addition, interest at 1% per month for each month or fraction of a month from the date of this notice. (See Tax Law, Sec. 377, Subdiv. 3)

The foregoing tax is hereby assessed as indicated herein.

THE STATE TAX COMMISSION

PAYMENT MAY BE MADE AT ANY OFFICE OF THE NEW YORK STATE INCOME TAX BUREAU
MAKE CHECKS PAYABLE TO THE STATE TAX COMMISSION

Form No. 321-23
New York State Income Tax

NEW YORK STATE-DEPARTMENT OF TAXATION AND FINANCE

490501

INCOME TAX BUREAU

NOTICE OF ADDITIONAL ASSESSMENT OF INCOME TAX

No._____

FOURTH COPY
(To remain in return folder)

ALBANY, N. Y.

Date JUL 14 1930

Stop on 12/7/31 - A. J.

Against

Elizaboth G. Pierson
925 Park Avonuo
New York City

55565

The audit of your State income tax return for 1928 discloses additional tax due from you as stated below:

Explanation:	Amount of tax due
Rontal income - 2223.72 and profit on sale of real estate - 1504.31 a total of - 3728.03 is considered taxable income. Tax due at 2% -	70.16

PY-PY 53
1/3/31

If not paid within ten days from date hereof there shall be added to the amount of this assessment 5% thereof, and in addition, interest at 1% per month for each month or fraction of a month from the date of this notice. (See Tax Law, Sec. 377, subdiv. 3)

not paid
NOV - 7 1930

[fol. 18] EXHIBIT 5—LETTER DATED MAY 3, 1930, FROM STATE TAX COMMISSION TO ELIZABETH G. PIERSON

Letterhead of Department of Taxation and Finance

May 3, 1930.

Elizabeth G. Pierson, 925 Park Avenue, New York City.

DEAR MADAM: A resident of the State of New York is taxable on his income from all sources with the exception of that specifically exempted by Statute. The income you exclude and receive from property rented as well as the profits from sale of real estate are fully taxable. It is requested, therefore, that you provide the details of the rental income as per Item 26 and supporting schedules thereof and the details of the sale of real estate as called for in Schedule F of Form 201 enclosed herewith.

A reply is requested within ten days, referring to Division 44—File 53583.

Very truly yours, State Tax Commission, by Roy H. Palmer, Assistant Director, Chief Audit Division, Income Tax Bureau.

RHD:CM.
Enc. Form—201.
1928.

[fol. 19] EXHIBIT 6—LETTER DATED MAY 6, 1930, FROM CHARLES W. PIERSON TO STATE TAX COMMISSION

May 6, 1930.

State Tax Commission, Albany, N. Y. Division 44—File 53583.

Elizabeth G. Pierson Income Tax 1928

DEAR SIRS: I have before me your letter of May 3, 1930, signed by Roy H. Palmer, Assistant Director, Chief—Audit Division, Income Tax Bureau addressed to my wife Elizabeth G. Pierson, on whose behalf I prepared and filed a return for the purposes of the 1928 income tax.

The return as filed stated that certain rents from real estate situated in Ohio and certain profits from the sale

of real estate situated in Ohio were not included as the taxpayer was advised that they were not taxable. Your letter states that:

"A resident of the State of New York is taxable on his income from all sources with the exception of that specifically exempted by Statute. The income you exclude and receive from property rented as well as the profits from sale of real estate are fully taxable."

In reply I would respectfully submit that the items in question are not taxable in New York for the following reasons:

[fol. 20] A state may not tax tangible property having a situs outside the state.

Union Transit Co. v. Kentucky, 199 U. S. 194;
Hoyt v. Commissioners of Taxes, 23 N. Y. 224.

A tax upon the rents of real estate or the proceeds of the sale of real estate is in substance a tax upon the real estate.

Pollock v. Farmers Loan & Trust Co., 157 U. S. 429, 580, et seq.; 158 U. S. 601, 629.

It must be borne in mind that the question here relates to tangible property and not to choses in action, as to which the maximum mobilia sequuntur personam would of course apply.

If the Department can refer me to any controlling decision holding that the State of New York can tax the income of tangible property situated in another state the additional data requested will be furnished and the additional tax will be paid without question.

Yours respectfully, Charles W. Pierson.

CWP:LS.

[fol. 21] EXHIBIT 7—LETTER DATED SEPTEMBER 30, 1930, FROM STATE TAX COMMISSION TO ELIZABETH G. PIERSON

Letterhead of Department of Taxation and Finance

Sept. 30, 1930.

Elizabeth G. Pierson, 925 Park Ave., New York City.

Re Additional Assessment #490501—1928

DEAR MADAM: This acknowledges receipt of an application for revision of the above assessment.

Pursuant to request contained therein, you are advised that arrangements for an informal hearing should be made by you by communicating with Mr. Wesley M. Dawson, District Director, 220 West 40th Street, New York City, Telephone Longacre 5701, who has charge of the calendar of hearings. The hearing will be held at such time as Deputy Commissioner Wilber and the writer are in New York City.

In connection with the action taken on audit, you are advised at this time that under the very clear provisions of the New York State Income Tax Law a resident of New York is taxable on the total amount of income derived from all sources whether within or without the State and income from rents and profits on the sale of real estate located outside of New York State were correctly included in the computation of your net income as adjusted.

Very truly yours, State Tax Commission, by Roy H. Palmer, Assistant Director, Chief Audit Division, Income Tax Bureau.

JJR:MC.

[fol. 22] EXHIBIT 8—APPLICATION FOR REVISION EXECUTED BY CHARLES W. PIERSON AS ATTORNEY-IN-FACT FOR ELIZABETH G. PIERSON

In the Matter of the State Income Tax for 1928 of ELIZABETH G. PIERSON of 925 Park Avenue, New York City, New York

Elizabeth G. Pierson, residing at 925 Park Avenue, in the City and State of New York, whose State income tax for the year 1928 has been recomputed by the State Tax Commission and an additional tax of $76.16 assessed, hereby makes application for revision of such additional assessment and requests the Tax Commission to grant a hearing thereon pursuant to Section 274 of the Tax Law.

The facts are as follows:

Your petitioner, who was a resident of the State of Ohio at the time of her marriage to Charles W. Pierson, a resident of New York, inherited from her father, a resident of Ohio, prior to 1928 certain real estate situated at Cincinnati, Ohio. In the year 1928 your petitioner received rental income of $2,223.72 from such real estate and a profit

on sale of portions of such real estate amounting to $1,584.31. Said income and said profit were not included in your petitioner's return of taxable income for the year 1928 for the reason, as stated on the face of said return, that your petitioner was advised that they were not taxable [fol. 23] by the State of New York. The State Tax Commission under date of July 14, 1930, recomputed your petitioner's tax for the year 1928 and imposed an additional tax of $76.16, being 2% of $3,803.13, the aggregate of said two items.

Your petitioner respectfully contends that said items of rental income from real estate situated in Ohio and profit on sale of real estate situated in Ohio are not taxable by the State of New York and that a tax imposed thereon by the State of New York would be in substance and effect a tax upon tangible property situated outside the State and would violate the rights of your petitioner under the laws of New York, the Constitution of the United States, and the Fourteenth Amendment thereof.

It is requested that if practicable the hearing herein applied for be held for convenience in the City of New York.

Respectfully submitted, Elizabeth G. Pierson, Petitioner, by Charles W. Pierson, Her Attorney in fact.

[fol. 24] EXHIBIT 9—LETTER DATED JANUARY 2, 1931, FROM ALEXANDER & GREEN TO STATE TAX COMMISSION

January 2, 1931.

State Tax Commission, Department of Taxation and Finance, Albany, N. Y.

Re Elizabeth G. Pierson—Income Tax 1928 Your Subject #490501

DEAR SIRS: Our client Elizabeth G. Pierson is in receipt of your letter dated December 29, 1930, signed by Cortland A. Wilbur, Deputy Commissioner, demanding payment of an additional assessment of income tax for 1928 amounting with interest to $84.53, and stating that unless payment is made within ten days "I shall immediately cause a warrant to be issued or the matter turned over to the Attorney General for action" etc.

As this additional assessment involves an important constitutional question and an application for revision is pending, we had assumed that payment would not be exacted pending the hearing and determination of the application. However, in view of the threat contained in your letter we herewith enclose the taxpayer's check to the order of the State Tax Commission for $84.53.

Please take notice that this payment is made under duress and compulsion and under protest and without prejudice to the pending application for revision or to the taxpayer's rights to recover back the amount so paid.

Yours respectfully, (Sgd.) Alexander & Green.

CWP:LS.
Encl.

[fol. 25] EXHIBIT 10—LETTER DATED JANUARY 7, 1931, FROM STATE TAX COMMISSION TO ALEXANDER & GREEN

Letterhead of Department of Taxation and Finance

January 7, 1931.

Alexander & Green, 120 Broadway, New York City.

Re Assessment 490501—1928 Issued Against Elizabeth G. Pierson

GENTLEMEN: Reference is made to your letter dated January 2, 1931, enclosing check for $84.53 which is herewith credited as a payment in satisfaction of the additional tax assessed against the above individual.

Your protest has been made a matter of record and if it ultimately appears that the assessment or any portion thereof is in error, proper adjustment will be made.

Very truly yours, State Tax Commission, by Roy H. Palmer, Assistant Director, Chief Audit Division, Income Tax Bureau.

JJR.G.

[fol. 26] EXHIBIT 12—AFFIDAVIT OF CHARLES W. PIERSON, VERIFIED JULY 3, 1931, TOGETHER WITH LETTER OF SAME DATE FROM CHARLES W. PIERSON TO STATE TAX COMMISSION

The affidavit of Charles W. Pierson, verified July 3, 1931, is printed as Schedule B attached to petition at page 8. Letter from Charles W. Pierson to State Tax Commission, dated July 3, 1931, is as follows:

July 3, 1931.

State Tax Commission, Department of Taxation and Finance, Albany, N. Y.

Attention of Roy H. Palmer, Esq., Assistant Director, Chief Audit Division Income Tax Bureau

Re Assessment 490501—1928—Issued Against Elizabeth G. Pierson

DEAR SIRS: As suggested by Mr. Palmer at the hearing before him on July 2, 1931, I have made and herewith enclose an affidavit in the above matter, which I trust will be found acceptable for the purposes of a stipulation as to the facts.

Yours respectfully, (Sd.) Charles W. Pierson.

CWP:LS.
Encl.

[fol. 27] IN SUPREME COURT OF NEW YORK, APPELLATE DIVISION

THE PEOPLE OF THE STATE OF NEW YORK, ex rel. ELIZABETH G. PIERSON, Relator,

vs.

THOMAS M. LYNCH and Others, Constituting the STATE TAX COMMISSION, Respondents

DECISION

Determination annulled, and matter remitted, with fifty dollars costs and disbursements, with direction to fix the income tax in accordance with the opinion.

Opinion by Hill, P. J.

All concur, except Rhodes and Bliss, JJ., who dissent and vote to confirm.

IN SUPREME COURT OF NEW YORK, APPELLATE DIVISION

OPINION OF HILL, P. J.

HILL, P. J.:

Relator is a resident of the State of New York and the owner of real prope-ty in Cincinnati, Ohio. The State Tax Commission has determined that a rental of $2233.72 received from the real property in 1928, and $1584.31 profit [fol. 28] upon the sale of a portion thereof in that year, should be included as a part of relator's income for the purpose of computing her income tax in this state. The determination is reviewed by certiorari.

"An annual tax upon the annual value or annual user of real estate appears to be the same in substance as an annual tax upon the real estate which would be paid out of the rent or income" (Pollock v. Farmer's Loan & Trust Co., 157 U. S. 429, 581). "In this Court the presently approved doctrine is that no state may tax anything not within her jurisdiction without violating the Fourteenth Amendment. State Tax on Foreign-Held Bonds, 15 Wall. 300; Union Refrig. Transit Co. v. Kentucky, 199 U. S. 194; Safe Deposit & Trust Co. v. Virginia, 280 U. S. 83." (Farmers' Loan & Trust Co. v. State of Minnesota, 280 U. S. 204, 210). "Taxation at the place of domicile of tangibles located elsewhere has been thought to be beyond the jurisdiction of the state" (Lawrence v. State Tax Commission of Mississippi, 286 U. S. 276, 280). The same opinion (p. 281) also speaks of "the rule now established that tangibles located outside the state of the owner are not subject to taxation within it". "Tangible personal property permanently located beyond the owner's domicile may not be taxed at the latter place." (Safe Deposit & Trust Co. of Baltimore, Md. v. Commonwealth of Virginia, 280 U. S. 83, 93). Analogy between tangible personal property with a fixed situs and real property, would sustain the application of the same rule as to each. The rental income from this real property located in Ohio may not be included by the [fol. 29] State of New York as a part of relator's income for the purposes of the income tax.

A different question is presented as to the item representing a profit upon the sale of a part of the real estate located in Ohio. "The tax upon profits made upon purchases and sales is an excise upon the result of the combination of sev-

eral factors, including capital investment and, quite generally, some measure of sagacity; the gain may be regarded as 'the creation of capital, industry and skill' " (Willcuts v. Bunn, 282 U. S. 216, 228).

The income tax of the relator should be fixed by deducting from the income the sum of $2233.72, the amount received as rentals from the real property in Ohio.

The determination of the State Tax Commission should be annulled and the proceedings remitted to it, with the direction to fix the income tax in accordance with this opinion.

[fol. 30] In Supreme Court of New York, Appellate Division

Present: Honorable James P. Hill, Presiding Justice; Honorable Leon C. Rhodes, Honorable Daniel V. McNamee, Honorable John C. Crapser, Honorable F. Walter Bliss, Associate Justices.

The People of the State of New York, Upon the Relation of Elizabeth G. Pierson, Relator,

against

Thomas M. Lynch, John J. Merrill and John P. Hennessey, as Commissioners Constituting the State Tax Commissioners of the State of New York, Respondent

Order Appealed From—Filed May 1, 1933

The Relator, Elizabeth G. Pierson, having applied to this Court for the review by certiorari of a determination of the State Tax Commission assessing an additional income tax against the Relator for the year 1928 in the sum of $76.16, being two per cent of $2,223.72, rental income received from real property situated in Ohio, and $1,584.31, profit on sale of [fol. 31] real property situated in Ohio, and the said proceeding having duly come on to be heard at the Term of this Court commencing on the 17th day of January, 1933, and after hearing Charles W. Pierson of Counsel for said Relator in support of said application, and Joseph M. Mesnig of Counsel for the Respondents in opposition thereto, and due deliberation having been had, it is hereby

Ordered, adjudged and decreed that the determination of the State Tax Commission be and the same hereby is annulled, Mr. Justice Rhodes and Mr. Justice Bliss dissenting and voting to confirm, and that the proceeding be and the same hereby is remitted to said State Tax Commission with the direction to fix the additional income tax assessed against the relator herein by deducting from relator's taxable income as determined by said State Tax Commission the sum of $2223.72, that being the amount received by relator as rentals from real property situated in Ohio, and cancelling the tax of $44.47 assessed by them against such rentals, and that the additional income tax assessed against the relator for the calendar year 1928 be and the same hereby is fixed at the sum of $31.69, and that relator recover $50.00 costs and her disbursements in this proceeding.

John S. Herrick, Clerk.

A copy. John S. Herrick, Clerk. (L. S.)

Entered: John S. Herrick, Clerk.

[fol. 32] Approved as to form.

John J. Bennett, Jr., Attorney General, Attorney for Respondents.

Filed and Ent. 5/1/33.

In Supreme Court of New York, Appellate Division, Third Department

[Title omitted]

Notice of Appeal to Court of Appeals

Please take notice that the constituent members of the State Tax Commission, the Appellant above named, hereby appeal to the Court of Appeals from an order of the Appellate Division, Third Department, made herein and entered on or about the 2nd day of May, 1933, and filed in the Albany County Clerk's Office on or about the 2nd day of May, 1933, which order annulled the determination of the [fol. 33] State Tax Commission reviewed herein; and they hereby appeal from each and every part of said order of annulment and from any judgment entered in pursuance thereof, except in so far as the said order appealed from

confirms and sustains an additional assessment of income tax against the relator herein in the sum of $31.69, computed upon profits arising from the sale of real property situated without the State of New York.

Dated Albany, N. Y., May 4, 1933.

John J. Bennett, Jr., Attorney General, Attorney for Respondents-Appellants, Office and P. O. Address: The Capitol, Albany, N. Y.

To Alexander & Green, Esquires, Attorneys for Relator-Respondent. John S. Herrick, Esquire, Clerk of the Appellate Division of the Supreme Court, Third Department, Albany, N. Y. John A. Knox, Esquire, Clerk of the County of Albany, Albany, N. Y.

[fol. 34] STIPULATION WAIVING CERTIFICATION

Pursuant to §170 of the Civil Practice Act, it is hereby stipulated that the foregoing are true and correct copies of the original petition for writ of certiorari, order for issuance of writ, writ and return thereto and of the whole thereof, and include all the accounts and all the evidence before the State Tax Commission upon the application of Elizabeth G. Pierson, to revise and resettle the accounts hereinbefore audited and stated by the said State Tax Commission against said Elizabeth G. Pierson for annual income tax, under the Tax Law, for the year 1928, all the papers and proofs upon the original statements of said accounts and all proceedings thereon, and also true and correct copies of the opinion of the Appellate Division, Third department, herein, the decision of the Appellate Division, Third Department, the order entered thereupon and here appealed from and the notice of appeal to the Court of Appeals; and certification thereof, as required by §616 of the Civil Practice Act or otherwise, is hereby waived, and it is further stipulated and consented that the same be filed in the office of the Clerk of the Court of Appeals.

Dated Albany, N. Y., July 15, 1933.

Alexander & Green, Attorneys for Relator-Respondent. John J. Bennett, Jr., Attorney General, Attorney for Respondent-Appellant.

Clerk's Certificate to transcript omitted in printing.

[fol. 35] IN COURT OF APPEALS OF NEW YORK

STATE OF NEW YORK, ss:

Pleas in the Court of Appeals, Held at Court of Appeals Hall, in the City of Albany, on the 21st day of November in the Year of Our Lord One Thousand Nine Hundred and thirty-three, Before the Judges of Said Court

Witness, the Hon. Cuthbert W. Pound, Chief Judge, presiding. Wm. J. Armstrong, Clerk.

REMITTITUR—November 22, 1933

Dec. 9, 1933. Ellis J. Staley. J. S. C.

[fol. 36] THE PEOPLE, &c., ex Rel. ELIZABETH G. PIERSON, Respondent,

ag'st

THOMAS M. LYNCH & o'rs, as Commissioners Constituting the STATE TAX COMMISSIONERS OF THE STATE OF NEW YORK, Appellants

Be it remembered, that on the 19th day of July, in the year of our Lord one thousand nine hundred and thirty-three, Thomas M. Lynch and others, as commissioners, &c., the appellants in this cause, came here unto the Court of Appeals, by John J. Bennett, Jr., Attorney General, and filed in the said Court a Notice of Appeal and return thereto from the order of the Appellate Division of the Supreme Court in and for the Third Judicial Department. And Elizabeth G. Pierson, the respondent in said cause, afterwards appeared in said Court of Appeals by Alexander & Green, her attorneys.

Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

[fol. 37] Whereupon, The said Court of Appeals having heard this cause argued by Mr. Joseph M. Mesnig, of counsel for the appellants, and by Mr. Charles W. Pierson, of counsel for the respondent, brief filed by amicus curiae, and after due deliberation had thereon, did order and adjudge that the order of the Appellate Division of the Supreme Court appealed from herein be and the same hereby is affirmed with costs.

And it was also further ordered, that the record aforesaid, and the proceedings in this Court, be remitted to the said Supreme Court there to be proceeded upon according to law.

[fol. 38] Therefore, It is considered that the said order be affirmed with costs, as aforesaid.

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Supreme Court of the State of New York before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Supreme Court, before the Justices thereof, &c.

Wm. J. Armstrong, Clerk of the Court of Appeals of the State of New York.

Court of Appeals, Clerk's Office

Albany, November 22, 1933.

I hereby certify that the preceding record contains a correct transcript of the proceedings in said cause in the Court of Appeals, with the papers originally filed therein, attached thereto.

Wm. J. Armstrong, Clerk. (Seal.)

[fol. 39] In Supreme Court of New York, Albany County

Present: Honorable Ellis J. Staley, Justice.

The People of the State of New York, Upon the Relation of Elizabeth G. Pierson, Relator,

against

Thomas M. Lynch, John J. Merrill and John P. Hennessey, as Commissioners Constituting the State Tax Commissioners of the State of New York, Defendants

Judgment on Remittiter—Dec. 9, 1933

The Relator, Elizabeth G. Pierson, having applied to the Appellate Division of the Supreme Court, Third Judicial

Department, for the review by certiorari of a determination of the State Tax Commission, assessing an additional income tax against the Relator for the year 1928 in the sum of $76.16, being two percent of $2,223.72 rental income received from real property situated in Ohio and $1,584.31 profit on sale of real property situated in Ohio, and an order having been entered in the office of the Clerk of the Appellate Division of the Supreme Court, Third Judicial Department, on the 17th day of January, 1933, wherein and whereby it was ordered, adjudged and decreed that the determination of the State Tax Commission be annulled and that the proceeding be remitted to the said State Tax [fol. 40] Commission with the direction to fix the additional income tax assessed against the Relator herein by deducting from Relator's taxable income as determined by said State Tax Commission the sum of $2,223.72, that being the amount received by Relator as rentals from real property situated in Ohio and cancelling the tax of $44.47 assessed by them against such rentals and that the additional income tax assessed against the Relators for the calendar year 1928 be fixed at the sum of $31.69, and that Relator recover $50.00 costs and her disbursements in this proceeding, and the respondent having appealed to the Court of Appeals of the State of New York from the said order of the Appellate Division of the Supreme Court of the State of New York, Third Judicial Department, and said appeal having been duly argued in the Court of Appeals by Mr. Joseph M. Mesnig, of counsel for the appellants, and by Mr. Charles W. Pierson, of counsel for the respondent, a brief having been filed by amicus curiae, and due deliberation having been had thereon, and the said Court of Appeals having sent hither its remittitur now filed herewith by which it appears that the said Court of Appeals has affirmed with costs the order of the Appellate Division of the Supreme Court of the State of New York, Third Judicial Department, and further proceedings in said Court having been remitted to the Supreme Court there to be proceeded upon according to law, and the respondent's costs and disbursements in the Appellate Division of the Supreme Court, Third Judicial Department, and in the Court of Appeals having been duly taxed in the sum of Two Hundred Fifty-four and 56/100 dollars.

[fol. 41] Now, on reading and filing the remittitur from the Court of Appeals herein and upon motion of Alexander & Green, attorneys for the respondent, it is

Ordered that the said order and judgment of the Court of Appeals be, and the same hereby are, made the order of this Court, and it is further

Ordered, adjudged and decreed that the determination of the State Tax Commission be, and the same hereby is, annulled, and that the proceeding be, and the same hereby is, remitted to said State Tax Commission with the direction to fix the additional income tax assessed against the Relator herein by deducting from Relator's taxable income as determined by said State Tax Commission the sum of $2,223.72, that being the amount received by Relator as rentals from real property situated in Ohio and cancelling the tax of $44.47 assessed by them against such rentals, and that the additional income tax assessed against the Relator for the calendar year 1928 be, and the same hereby is, fixed at the sum of $31.69, and that Relator recover Two Hundred Fifty four 56/100 dollars her costs and disbursements in this proceeding.

Enter:

Ellis J. Staley, J. S. C.

(4615-C)

[fol. 42] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed April 2, 1934

The petition herein for a writ of certiorari to the Supreme Court of the State of New York is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.